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12 THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA  
15

16 THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA, a  
17 California Corporation,

18 Plaintiff,

19 v.

20 PAUL S. AISEN, an individual;  
JEREMY PIZZOLA, an individual;  
21 DEBORAH TOBIAS, an individual;  
GUSTAVO JIMENEZ-  
22 MAGGIORA, an individual;  
PHUOC HONG, an individual;  
23 HONG MEI QIU, an individual;  
STEFANIA BRUSCHI, an  
24 individual; JIA-SING SO, an  
individual; MAYYA NESSIRIO, an  
25 individual; ELIZABETH SHAFFER,  
an individual; DEVON GESSERT,  
26 an individual; KELLY HARLESS,  
an individual; UNIVERSITY OF  
27 SOUTHERN CALIFORNIA, a  
California Corporation; and DOES 1-  
28

Case No. 15-CV-01766-BEN-BLM

**FIRST AMENDED COMPLAINT  
FOR MONEY DAMAGES AND  
EQUITABLE RELIEF FOR:**

1. **BREACH OF FIDUCIARY DUTY;**
2. **BREACH OF DUTY OF LOYALTY BY EMPLOYEE;**
3. **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AND DUTY OF LOYALTY;**
4. **INTERFERENCE WITH CONTRACT;**
5. **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
6. **CONVERSION;**
7. **COMMISSION OF COMPUTER CRIMES;**
8. **VIOLATION OF GOV'T CODE § 87100;**

25, Inclusive,  
Defendants.

PAUL S. AISEN, an individual; and  
UNIVERSITY OF SOUTHERN  
CALIFORNIA, a California  
Corporation,

Counterclaim  
Plaintiffs,

v.

THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA, a  
California Corporation; DR.  
WILLIAM C. MOBLEY, an  
individual; and DOES 1-25,  
Inclusive,

Counterclaim  
Defendants.

**9. VIOLATION OF GOV'T CODE §  
87407; and  
10.CIVIL CONSPIRACY**

**DEMAND FOR JURY TRIAL**

Plaintiff and Counterclaim Defendant The Regents of the University of California alleges upon knowledge as to its own actions, and upon information and belief as to all other matters, against Defendants Paul S. Aisen, Jeremy Pizzola, Deborah Tobias, Gustavo Jimenez-Maggiora, Phuoc Hong, Hong Mei Qiu, Stefania Bruschi, Jia-Sing So, Mayya Nessirio, Elizabeth Shaffer, Devon Gessert, and Kelly Harless, and the University of Southern California as follows:

**THE PARTIES**

1. The Regents of the University of California ("The Regents" or "Plaintiff") is a California corporation doing business in the County of San Diego, State of California.

2. Defendants Paul S. Aisen ("Aisen"), Jeremy Pizzola, Deborah Tobias, Gustavo Jimenez-Maggiora, Phuoc Hong, Hong Mei Qiu, Stefania Bruschi, Jia-Sing So, Mayya Nessirio, Elizabeth Shaffer, Devon Gessert, and Kelly Harless (sometimes collectively referred to as "Individual Defendants") are and were at all relevant times individuals residing in the County of San Diego, State of California.

4           4.       Plaintiff is informed and believes and thereon alleges that each of the  
5 Defendants fictitiously sued hereunder as Does 1 through 25 are in some manner  
6 responsible for the occurrences alleged hereunder and the damages which Plaintiff  
7 alleges hereunder, and that at all times, each of said Does were acting as the agent  
8 for each other or the Defendants within the scope and capacity of said agency.  
9 Plaintiff is ignorant of the true names and capacities of such Defendants sued herein  
0 as Does 1 through 25 inclusive and therefore sues these Defendants by such  
1 fictitious names for the same acts and causes of action alleged against Defendants.  
2 Plaintiff will seek leave of Court to amend this First Amended Complaint (“FAC”)  
3 to allege the true names and capacities of said Defendants at such time as they may  
4 be ascertained.

## JURISDICTION AND VENUE

## GENERAL ALLEGATIONS

### The Regents and the ADCS

6. The Regents is a California corporation authorized and empowered to administer a public trust known as the University of California (“UC” or “the University”). Under Article IX, section 9, of the California Constitution, The Regents is vested with full powers of organization and government over the University, including all powers necessary or convenient for the effective administration of the public trust and the advancement of the tripartite mission of the University: to provide excellence in teaching, research, and public service.

7. The Regents maintains a campus in this district known as the University of California, San Diego (“UCSD”). UCSD operates a School of Medicine as well as the UC San Diego Health System, which is the region’s only academic health system and provides patient care, conducts medical research, and serves as a training ground for health care professionals.

8. Since 1991, UCSD has managed a research enterprise known as the Alzheimer’s Disease Cooperative Study (“ADCS”) under a cooperative agreement with the National Institute on Aging (“NIA”), which is an agency of the federal government and one of the National Institutes of Health (“NIH”). The ADCS facilitates the testing of new drugs for the treatment of Alzheimer’s disease, particularly drugs that might not otherwise be tested by private industry. To this end, ADCS coordinates clinical trials and other research activities at approximately 70 academic medical centers and research clinics in the United States and Canada. The ADCS is in the nature of a joint venture, but instead of operating for profit, it operates for the advancement of the missions of the NIA and The Regents with respect to medical education, research, and public service.

9. The work of the ADCS is funded primarily by the federal government and private companies pursuant to the terms of written contracts entered into by The Regents. These contracts are sometimes colloquially referred to as “grants,” and

typically carry titles such as “Collaborative Study Agreement” and “Clinical Trial Research Collaboration Agreement.” The value of the grant funding is in excess of \$100 million. This funding finances research activity as well as administrative costs, including the salaries of the approximately 80 employees and administrators who run the ADCS at UCSD.

10. One of the core functions that UCSD performs in connection with the ADCS is to receive, monitor, and analyze clinical data (“ADCS Data”) from research studies that ADCS administers. Such clinical data includes medical information of the individuals who have volunteered to participate in clinical trials of new drugs, and other information of a sensitive nature. Such data is transmitted to ADCS via the internet and stored on computer servers. As used herein, the ADCS Data is distinct from the computer systems that UCSD built to collect, maintain, and process the ADCS Data. Additionally, the software on which the UCSD computer systems run (which was also developed by UCSD’s staff, while employed by UCSD), as used herein, is distinct from the computer system itself and from the ADCS Data; it is the taking of the ADCS Data and the actions taken by the Defendants to block access and restrict UCSD’s ability to use its own computer systems that is a material issue in this case, as currently pled; it is not the misappropriation of UCSD trade secrets, or the infringement of UCSD’s copyright in any source code or software.

#### **UCSD Entrusted Defendant Aisen with the Directorship of the ADCS**

11. From the time that the ADCS was established in 1991 until February 2007, the Director of the ADCS was Leon Thal, M.D., a Distinguished Professor and Chair of Neurosciences at UCSD. Dr. Thal had joined the UCSD faculty in 1985 and over the years became the acknowledged leader in the development of drug therapies for Alzheimer disease. In February 2007, he was tragically killed in a plane crash.

12. Following the death of Dr. Thal, UCSD conducted a search for a new Director of the ADCS and hired Defendant Paul Aisen, M.D., in November 2007. Dr. Aisen became employed by The Regents as a Professor of Neurology and Medicine at UCSD and was appointed Director of the ADCS. As such, Defendant Aisen was the agent of The Regents and its fiduciary in effectuating UCSD's participation in the ADCS venture. In this director-level position, Defendant Aisen owed fiduciary duties to The Regents, including but not limited to, a duty of loyalty to the University during his tenure. These duties included a duty to refrain from actions that are inimical to the interests of The Regents, and to avoid using his position as Director of the ADCS to give preference to his own interests, or those of a rival employer, at the expense of The Regents and UCSD. The position of Director of the ADCS is one of prestige and influence in the field of life sciences, and UCSD placed trust and confidence in Defendant Aisen to discharge his obligations to The Regents with honesty and candor.

**Defendant Aisen and Defendant USC Conspire To Take All of the ADCS Employees and All of Its Contracts/Grants To Displace UCSD's Role in the ADCS**

13. The Regents is informed and believe and therefore allege that as early as January 16, 2015, Defendant Aisen was in the process of putting to paper his plans to move the entire ADCS and all of its contract-based research grants to USC, and in doing so to disrupt UCSD's contractual relations with the private entities, as well as the National Institutes of Health/National Institute on Aging, that sponsor the various ADCS studies.

14. Although the extent of Defendants' wrongdoing is still unknown, The Regents learned that, at least as early as April 2015, Defendant Aisen and Defendant USC began to conspire with one another to displace UCSD in the ADCS, to interfere with The Regents' contractual and economic relationships with ADCS funders, to interfere with The Regents' relationships with UCSD employees engaged in work on behalf of the ADCS, and to usurp the beneficial opportunities available



1 to The Regents through UCSD's role in the ADCS. The Regents do not presently  
 2 have access to all of the facts showing the extent of the conspiracy and the wrongful  
 3 acts done in furtherance of their common design, and though UCSD's motion for  
 4 expedited discovery was granted and certain depositions were taken, additional  
 5 discovery will likely yield yet more facts that bolster the claims that The Regents  
 6 will present at trial.

7 15. In or about April 2015, Defendant Aisen reached out to USC Provost  
 8 Michael Quick to resume discussions, begun at some earlier time, regarding the  
 9 potential for Defendant Aisen to join the faculty at USC, which operates the Keck  
 10 School of Medicine ("Keck") near downtown Los Angeles. Keck has an  
 11 Alzheimer's Disease Research Center, also located near downtown Los Angeles.

12 16. For reasons known best to Defendants, the discussions between  
 13 Defendants Aisen and USC soon centered on making arrangements for Dr. Aisen to  
 14 remain in the vicinity of La Jolla, where USC had no facilities of any kind.  
 15 Defendants agreed to create a brand new "Institute" in San Diego by hiring away a  
 16 number of key UCSD employees who then served the ADCS, and Defendants  
 17 jointly planned to supplant UCSD as the contracting party in connection with  
 18 research contracts and other agreements related to ADCS, including the lease for the  
 19 office space that houses the UCSD/ADCS staff. Defendants Aisen and USC thus  
 20 planned to cripple UCSD's ability to perform its cooperative agreement with the  
 21 NIA to administer the ADCS.

22 17. Defendant Aisen demanded, and Defendant USC agreed to provide,  
 23 significant incentives for Dr. Aisen to betray the trust reposed in him by UCSD.  
 24 Among other things, USC in or about May 2015, offered Aisen a guaranteed salary  
 25 of \$500,000 per year through 2020, and both interest-free and low-interest financing  
 26 on a new home, with forgiveness of at least half the debt over time. The terms  
 27 offered by USC were expressly set forth with the expectation that Aisen's salary  
 28 would be paid by "extramural research funding you [*i.e.*, Aisen] obtain." Thus,

1 thanks to Defendant USC, Defendant Aisen has a strong personal financial incentive  
2 to interfere with The Regents' contractual relationships with UCSD's research  
3 sponsors.

4 18. Defendant Aisen's compensation structure with USC was based in  
5 large part on Defendant Aisen's ability to transfer federal funding from UCSD to  
6 USC. As of May 19, 2015, emails recovered in this case indicate that Defendant  
7 Aisen was finalizing salary negotiations with USC, with a May 19, 2015, email from  
8 Defendant USC's Associate Dean for Clinical Research, Thomas Buchanan,  
9 advising Defendant Aisen: "Here is an *updated* draft of the [USC Offer Letter]. All  
10 changes are in Appendix B." (Italics added). Defendant Aisen then circulated the  
11 revised draft to two of his co-conspirators, Defendants Tobias and Pizzola. A true  
12 and correct copy of this email is attached to this FAC as Exhibit 1.

13 19. Then, in an offer letter Defendant USC provided to Defendant Aisen,  
14 bearing a date of May 28, 2015, Defendant USC explained to Defendant Aisen the  
15 following:

16 You are expected to charge research expenses and salaries  
17 against extramural research funding you obtain, as  
18 appropriate and as soon as that funding is obtained. **We**  
19 **expect that you will support your *entire salary* using**  
20 **funds from your institute. You are expected to strive**  
21 **to transfer all current federal funding that may be**  
22 **transferred to USC as soon as possible, but no later than**  
23 **6 months after your start date, unless there are**  
24 **circumstances beyond your control.**

25 See Draft of USC Offer Letter to Defendant Aisen, attached hereto as Exhibit 2, at p.  
26 3 of 12 (emphasis added). Through mechanisms including what is known as  
27 "indirect cost" recovery, the federal funding would provide Defendant USC with the  
28 benefit of covering its costs for the San Diego facility that was being created  
through the former ADCS personnel and its contracts and grants. *Id.* at Appendix B  
at 1.



20. Defendants further agreed that USC would provide a “start-up loan” of up to \$8 million to finance the creation of the new “Institute” in San Diego. *Id.* In making these financial arrangements, Defendant USC expressly stated its expectation that Defendant Aisen would arrange a “transition to USC” of existing research activities administered by UCSD, and that the new “Institute” would incur real estate remodeling expenses only “if a relocation from current [UCSD-leased] facilities is required.” *Id.*; *see also* p. 12 of 12 of Exhibit 1 at Appendix B. Thus, thanks again to Defendant USC, Defendant Aisen had a strong financial incentive to interfere with The Regents’ relationships with the UCSD faculty and employees who staffed the ADCS.

21. The terms of Defendant USC’s May 2015, offer to Defendant Aisen called for Aisen to join USC as of September 1, 2015. In accordance with the incentives he anticipated to receive from USC, Dr. Aisen, while still employed by The Regents, and in violation of his duties of loyalty and fidelity, began to recruit other UCSD employees to join him in his scheme to interfere with the contractual relationships between UCSD and research sponsors, and to attempt to interfere with UCSD’s performance of its agreements both with the NIA and with private sponsors of the ADCS.

22. In or about April 2015, UCSD employees also began observing events that appeared out of place. For example, one ADCS employee (who was one of the many to resign without advance notice and immediately assume the same position at USC) told another employee (who would later refuse to resign her employment with UCSD) that “there’s something going on here. Debbie Tobias asked me to make copies of every single job description, resume, and salary of every ADCS employee.” The employees surmised that there might be a layoff and became nervous but complied with the request by Defendant Tobias, who was the then Director of Administration for the ADCS. At or about the same time, Defendants Tobias and Pizzola reserved ADCS conference rooms and held “closed-door”

1 meetings (held at UCSD's leased offices no less) with two to three unknown people  
 2 (one man and possibly two women who were dressed up in business attire). These  
 3 meetings lasted for about a day to a day and a half, and it was observed that  
 4 Defendant Aisen would come in and out of the meetings, but at all times the doors  
 5 would remain closed. UCSD is now informed and believes, and thereon alleges,  
 6 that those meetings were taking place among Defendants Aisen, Tobias, Pizzola, and  
 7 representatives of USC for the purpose of furthering the conspiracy to take from  
 8 UCSD the ADCS Data as well as to encourage the ADCS employees to resign from  
 9 UCSD and join USC.

10 23. At or about this same time, and also while still employed at The  
 11 Regents, Defendant Aisen used his position as Director of the ADCS to transition  
 12 federal funding away from UCSD and towards his prospective employer, USC. For  
 13 example, Defendant Aisen contacted several NIA representatives on May 21, 2015,  
 14 to notify them of his impending move to USC and that he expected to "complete the  
 15 transition to a USC affiliation September 1, 2015." A true and correct copy of this  
 16 email communication is attached to this FAC as Exhibit 3.

17 24. Handwritten notes recently found in Defendant Aisen's office indicate  
 18 that Defendant Aisen and USC expected the actions of Defendant Aisen and his co-  
 19 conspirators to raise a significant number of legal issues arising from the scheme  
 20 they were in the process of carrying out, such that Defendant Aisen noted that he  
 21 and his co-conspirators would need an "aggressive litigator."

22 **The May 22, 2015 Announcement by Defendant Aisen to the ADCS Staff that**  
 23 **He and the Entire ADCS Were Leaving to USC Including All Contracts and**  
 24 **Grants**

25 25. On May 22, 2015, after entering into the conspiracy with USC,  
 26 Defendant Aisen, using the authority of his position as director of the ADCS,  
 27 summoned all ADCS employees to a meeting at the Sheraton hotel across the street  
 28 from the ADCS and told them that he was moving to USC, and that all the ADCS  
 grants and sponsors would move with him.

26. Aisen also falsely advised the meeting attendees that none of the employees working on behalf of ADCS would have jobs at UCSD. Aisen told the ADCS staff that USC would offer all of them jobs if they left UCSD. After Defendant Aisen finished speaking to the ADCS staff, Defendant Tobias stood up and took the microphone. Tobias then said that she had looked at the USC proposal and it was a good deal, and that USC would extend offers to all employees at the same or greater salary than they currently were being paid by UCSD. Tobias further clarified that USC's Human Resources Department would be on-site the following Wednesday, May 27, 2015, and that USC had been given copies of all ADCS job descriptions, all resumes of the employees, and the salaries of all ADCS employees, and that USC would "use this information" to prepare job offers for each of the ADCS employees. Tobias further said that the "transition" would be completed by September 1, 2015, and the ADCS would likely be moving from the existing space as the ADCS' lease was up. Tobias then stated that everyone working within the ADCS would receive offer letters by mid-July 2015. So there is no doubt, attached as Exhibit 4 to this FAC is a true and correct copy of a table listing the meetings that Defendants had planned out for USC to meet with the ADCS staff the next Wednesday, May 27, 2015. That document, titled "USC HR Group Meetings Schedule Wed May 27<sup>th</sup>," lists by ADCS group the meetings USC was planning to have with the ADCS employees to set in place their job offers with USC and, in turns, their resignations *en masse* from UCSD. The brazenness of the actions of Defendants Aisen, Tobias, and Pizzola, as Exhibit 4 shows, is demonstrated by the fact that they and USC planned to conduct the USC HR meetings within the very same complex being occupied by the ADCS. See column titled "Location," which lists various conference rooms each of which are within the complex being leased by UCSD to house its ADCS.

1           27. At that May 22, 2015, meeting at the Sheraton Hotel, Defendant  
2 Pizzola also took the microphone encouraging all ADCS personnel to join him, and  
3 the other Defendants, in moving to USC.

4           28. After the May 22, 2015, meeting, Defendant Harless, while still  
5 employed by UCSD, distributed “job numbers” to individual UCSD employees  
6 indicating the open position at USC to which the individual UCSD employees  
7 should apply.

8           29. The definitiveness and certainty of Defendant Aisen’s comments at the  
9 May 22 ADCS staff meeting about his commitment to move to USC and take all the  
10 ADCS studies with him, is also confirmed by the May 21, 2015, email Defendant  
11 Aisen wrote to the NIH wherein he said: “**Our** *decision to accept* the USC offer was  
12 therefore straight-forward.” *See* Exhibit 3 at p. 4 attached (emphasis added).  
13 Defendant Aisen’s use of the word “Our” in terms of the decision that had been  
14 made to move to Defendant USC is further evidence of Defendant Aisen working  
15 together with his co-conspirators to take the actions that are set forth in this FAC.

16           **Defendant USC Holds Job Fair to Encourage All ADCS Staff to Leave UCSD**

17           30. In or about the first week of June 2015, Defendant USC held what  
18 some have referred to as a “job fair” exclusively for the purpose of transitioning  
19 ADCS employees to USC. Defendant USC had originally planned on holding the  
20 job fair on May 27<sup>th</sup>. *See* Exhibit 4. Defendant USC acted with indifference to the  
21 rights and obligations of the ADCS to UCSD by conducting the job fair at the  
22 Sheraton Hotel, across the street from the ADCS offices. Defendant Tobias and  
23 Pizzola fueled the distress caused by Defendant Aisen’s announcement on May 22,  
24 2015, that he and all of the studies would be leaving UCSD for ADCS. They did  
25 this by spreading rumors that the ADCS was about to be shut down. People who  
26 ended up staying at UCSD described the fear this caused, saying that this created a  
27 feeling that “we have to go [to USC] or else we won’t have jobs.”  
28

1           31. Almost all of the ADCS employees attended the job fair at the Sheraton  
 2 Hotel. Defendant Jimenez-Maggiora had told people within the ADCS to ensure that  
 3 they dressed up and to look their best. Thus, many of the ADCS employees were  
 4 seen wearing interview attire. This created a feeling described by some within the  
 5 ADCS as being “surreal.”

6           32. At the Sheraton Hotel, Defendant USC held the meetings in one large  
 7 room. According to people that attended, there were multiple tables (about 4-5)  
 8 with a representative from USC at each. Once a table opened up, an ADCS  
 9 employee waiting to meet with Defendant USC would go to the table. The  
 10 representative from Defendant USC asked for the person’s name, and after looking  
 11 up information (which some people say the USC representatives had on tablet  
 12 computers), the USC representative provided a USC job title, and also handed out a  
 13 document with a job description/job duties, together with a salary range for various  
 14 positions. Many of these job descriptions and proposed job duty descriptions were  
 15 described as “generic.” For example, when one ADCS employee-interviewee  
 16 pointed out to the USC representative that what she had been given did not match  
 17 the duties she actually performed for the ADCS, and that the salary was also  
 18 substantially off compared to what she was making at UCSD, the USC  
 19 representative responded, “don’t worry about it, we just need to get you in the  
 20 system.” As to the salary, the USC representative said, “we’ll fix that later once you  
 21 get started.” Representatives of Defendant USC were also heard saying, “we have a  
 22 job for everyone at the ADCS,” and that the ADCS employees must apply right  
 23 away as “we [USC] need to get these positions filled immediately.”

24           33. Significantly, Defendant Tobias and Pizzola were also present at the  
 25 USC job fair, where they acted as liaisons for USC, and helped USC hire away  
 26 UCSD employees. This is true despite the fact that they were UCSD employees and  
 27 being paid a salary by UCSD.  
 28

1           34. After the USC job fair, some ADCS employees heard their then co-  
 2 workers refer to people who were expressing loyalty to UCSD as “traitors.”  
 3 Defendant Pizzola told people who were considering staying at UCSD, “everyone is  
 4 going; there is nothing going to be left here.” He then said, “why would you stay  
 5 here,” referring to ADCS employees thinking of staying at UCSD and not leaving  
 6 for USC.

7           35. The conduct by Defendants Aisen, Tobias and Pizzola referenced in  
 8 Paragraphs 25 to 33 created fear and unrest and concern among UCSD’s employees  
 9 and disrupted their relationships with The Regents.

10           36. Each of Defendants Jeremy Pizzola, Deborah Tobias, Gustavo  
 11 Jimenez-Maggiora, Phuoc Hong, Hong Mei Qiu, Stefania Bruschi, Jia-Sing So,  
 12 Mayya Nessirio, Elizabeth Shaffer, Devon Gessert, and Kelly Harless, were UCSD  
 13 employees who agreed to join Defendant Aisen in a conspiracy to act as “double  
 14 agents” — ostensibly employed by The Regents but in reality working to undermine  
 15 UCSD, to advance their own personal interests, and to serve the interests of  
 16 Defendant USC, in violation of their obligations under California Labor Code 2863,  
 17 which states “An employee who has any business to transact on his own account,  
 18 similar to that entrusted to him by his employer, shall always give the preference to  
 19 the business of the employer.” For example, approximately one week prior to the  
 20 May 22, 2015 staff meeting, above, and while still employed by The Regents, with  
 21 the knowledge of Defendant Aisen, Defendant Tobias arranged a meeting with USC  
 22 personnel and personnel at UCSD to facilitate USC’s understanding of the ADCS  
 23 physical server organization, connections, and structures. Several people from  
 24 Defendant USC visited the ADCS offices and took notes and pictures of the servers  
 25 used to store documents in a system known as “CTMS” (the Clinical Trial  
 26 Management System) which, in turn, were used by many ADCS employees.  
 27 Approximately one week after the May 22, 2015, meeting, Defendants Tobias and  
 28 Pizzola also requested and received copies of all CTMS data stored on the CTMS



1 local servers prior to their departure. Further discovery from the Defendants will be  
2 required to determine exactly what was taken from the CTMS local servers.

3 **Defendants Encouraged Study Sponsors to Terminate their Contracts with**  
4 **UCSD**

5 37. In addition to encouraging the NIA to move its sponsorship to USC, as  
6 alleged above in paragraph 23, Defendants Aisen, Pizzola, and Tobias, while still  
7 employed by The Regents, contacted a number of the more important commercial  
8 sponsors of ADCS research, without informing UCSD that they were doing so, in an  
9 effort to persuade the sponsors to terminate, and move, their contracts with UCSD to  
10 USC. For example, Defendants Aisen, Pizzola, and Tobias attempted to pressure  
11 and persuade Toyama Chemical Company (“Toyama”), a research sponsor and party  
12 to a Collaborative Study with The Regents, to terminate its contractual arrangement  
13 with The Regents and form a new contract with USC. On May 30, 2015, Defendant  
14 Pizzola wrote to Toyama:

15 We believe that Paul [i.e., Defendant Paul Aisen] can  
16 affiliate with USC and form a new institution that would  
17 reside here in San Diego. The new institute will hire on  
18 all of the staff members currently working for Paul. We  
19 have discussed with USC and they have indicated that  
20 they can issue replacement contracts to all TCAD sites  
21 [i.e., research facilities under contract with The Regents]  
22 simultaneously with precisely the same terms and  
23 conditions. . . . This would need to be very carefully  
24 timed with Toyama as we believe Toyama could chose  
25 [sic] to cancel its agreement with UCSD with 30 days’  
26 notice.

27 In short we believe that we can have essentially the same  
28 people filling the same roles in the TCAD study simply  
under a new institutional affiliation.

29 38. Toyama’s representatives responded to Defendants Aisen, Pizzola, and  
30 Tobias on June 3, 2015, stating in part, “Have you already discussed these with  
31 UCSD and NIH? It is important for Toyama to confer directly with UCSD to make  
32 sure that Toyama honors all of its obligations to UCSD and complies with all  
33 applicable laws.” However, rather than advise UCSD of Toyama’s inquiry,

1 Defendant Pizzola replied “we do not think it is time to discuss anything with  
2 UCSD,” and told Toyama “we don’t know what’s going to happen with UCSD.”

3 39. On June 8, 2015, Toyama wrote directly to Defendant Aisen, stating in  
4 part:

5 After carefully considering the actions that Jeremy [*i.e.*,  
6 Defendant Pizzola] and you have recently requested of us,  
7 we find that the complexity of these requested actions  
8 raises a series of significant logistical, contractual, and  
9 regulatory compliance issues. Resolution of these issues,  
10 from both business and legal perspectives, requires us to  
11 consult with UCSD and its counsel. We thus request that,  
12 in addition to the project meeting scheduled for next week  
13 in San Diego, that you kindly arrange for us and our  
14 counsel to meet separately with the appropriate  
15 representatives of UCSD and its counsel so that this  
16 consultation can occur.

17 Notwithstanding this explicit request from Toyama, Defendant Aisen concealed the  
18 communication from UCSD and its counsel, and accelerated Defendants’ planned  
19 transition to USC.

20 40. Earlier, Defendant Aisen was observed engaging in very similar  
21 conduct, telling a researcher at Yale University (who was responsible for the study  
22 known as FYN) that, “by the way, I’m resigning. I’ve been trying to work things  
23 out with UCSD, but it has not been working. I am going to USC.”

24 **Defendants’ Additional Bad Acts Against UCSD Done While Still Employed**  
25 **And Receiving A Salary From UCSD**

26 41. Additional wrongful acts of the Defendants also include as follows:  
27 Devon Gessert, the then Director of Clinical Operations for the ADCS, and  
28 Defendant Kelly Harless, the Clinical Operations Manager for the ADCS, told  
ADCS employees: “We need to immediately ship out all the clinical trial supply  
kits,” and instructed other ADCS employees to download onto USB sticks or  
external drives their respective emails.

42. Then, Defendant Elizabeth Shaffer, the Regulatory Director of the  
ADCS who later moved to USC, told another ADCS employee that she had been

1 directed by Defendant Pizzola to take and then to ship FDA forms, known as “1572  
 2 forms,” and was doing so with respect to two studies. In this regard, one employee  
 3 of the ADCS saw Defendant Shaffer walking out of the ADCS offices with the  
 4 “1572 forms” for one of the two studies referenced above. Defendant Shaffer was  
 5 also observed shipping out months-worth of clinical trial supplies. Defendant  
 6 Shaffer was observed doing all of these things while she was still employed, and  
 7 being paid by, UCSD. One employee, who remains employed by UCSD,  
 8 confronted Shaffer and said to Shaffer, “you don’t own these documents, and I can’t  
 9 believe you are doing this.” Shaffer responded, “I created them, so I can remove  
 10 them.” It was also observed that other forms and miscellaneous documents were  
 11 being taken by the employees who would later quit their employment with the  
 12 ADCS in favor of USC. They did this despite UCSD’s obligation, as the  
 13 coordinating center for these and other studies, to keep and maintain these forms in  
 14 its files.

15 43. Separately, UCSD learned from employees who did not leave to join  
 16 USC that prior to the Defendants resigning their employment to join USC, there was  
 17 an approximately three-hour meeting between Eli Lilly representatives and several  
 18 of the defendants while they (these defendants) were still employed by UCSD.  
 19 UCSD is informed and believes and thereon alleges that at that meeting was  
 20 Defendant Gessert, who as noted above, later quit and joined USC, as well as Alison  
 21 Belsha, the then Project Manager on the Eli Lilly “A4” study, who also resigned and  
 22 then joined USC, as well as certain unidentified Lilly personnel. UCSD is also  
 23 informed and believes and therefore alleges that Belsha told another UCSD  
 24 employee that she had just got off the phone with representatives of Eli Lilly for  
 25 what was described as a “transition planning meeting” and wherein it was discussed  
 26 that Eli Lilly had been persuaded to take its A4 study away from UCSD, so that  
 27 Defendants Aisen and USC could administer it. Significantly, this meeting occurred  
 28 weeks before Defendant Aisen resigned.

44. Further, during the second to last week of June, while still employed by UCSD, Defendant Shaffer took part in a meeting with someone she described as the Chair of the USC Institutional Review Board (“IRB”), for the purpose of preparing paperwork to submit to what she described as a July 12<sup>th</sup> IRB meeting at USC. Defendant Shaffer told another ADCS employee that USC wanted its IRB to approve of USC taking over the Eli Lilly A4 study as soon as possible, to facilitate written agreements between Eli Lilly and USC for transfer of Eli Lilly’s grant for the “A4 Study” from UCSD to USC. Further, Defendant Shaffer told ADCS personnel that she was in the process of working with USC to prepare “protocols” to be presented or approved by the USC IRB during its July 12<sup>th</sup> meeting, and for the purpose of moving the studies known as “FYN” and “INI.” The INI study is sponsored by Wake Forest University. Again, Defendant Shaffer engaged in all of these efforts in derogation of UCSD’s interests while still employed by UCSD. Moreover, Defendant Shaffer explained that she felt that she was not violating any laws or obligations to UCSD as she was not doing this work while physically at the ADCS offices, but rather doing it from an undisclosed remote location.

45. Additionally, UCSD is also informed and believes and thereon alleges that Defendant Harless promised, in emails and/or text messages she sent to certain ADCS employees, that everyone would be getting USC offer letters; provided details of the USC “job fair” alleged above; and told them what USC jobs they should be applying for (which would mirror their then-current jobs at the ADCS). Defendants Gessert and Harless acted as intermediaries between Defendants Pizzola and Tobias who were more focused on high-level administrative tasks as it related to attempting to move the entire ADCS to USC.

46. Still further, during the chaos that Defendants had created within the ADCS, Defendant Pizzola, along with Defendants Aisen and Tobias, encouraged ADCS employees to leave UCSD and take jobs with USC. For example, Defendant Pizzola told one of the Clinical Monitors (a key person who enables the ADCS to

1 carry out its patient-monitoring duties for the various studies) during the  
 2 approximately one to two weeks before June 21, 2015, that she should apply for a  
 3 job at USC and that “all studies would be moving to USC.” When this individual  
 4 had not applied for a job, Defendant Pizzola followed up asking, “why haven’t you  
 5 applied yet?” referring to a job that was waiting for her at USC. Again, Defendant  
 6 Pizzola made these statements, like the multiple other wrongful acts of the  
 7 Individual Defendants, while still employed at and being paid by UCSD.

8 **UCSD’s Request that Defendant Aisen Avoid Violating the Law as He Is**  
 9 **Departing Results in Defendant Aisen’s Immediate Resignation**

10 47. Then, on or about June 18, 2015, while travelling and away from San  
 11 Diego, Dr. Aisen sent an email announcing that he would be resigning from UCSD  
 12 effective July 1, 2015, to take a position at USC. That same day, UCSD Campus  
 13 Counsel Dan Park sent Aisen a letter congratulating Aisen on his job offer from  
 14 USC, and reminding Aisen of his fiduciary duties as Director of the ADCS, and an  
 15 employee’s duty of undivided loyalty to his employer during the term of  
 16 employment. Mr. Park’s letter further explained:

17 In addition to avoiding any action that could disrupt UC  
 18 San Diego’s contractual relationships, you should be sure  
 19 not to remove from UC San Diego’s possession or control  
 20 any equipment, records, electronic data, or software that  
 21 were purchased or created for the ADCS at UC San  
 22 Diego. All such items are the property of UC San Diego,  
 23 the taking of which without UC San Diego’s express  
 24 permission would be an illegal conversion. *Burlesci v.*  
*Petersen* (1998) 68 Cal.App.4th 1062. Conversion is a  
 25 strict liability tort, “meaning questions of the defendant’s  
 26 good faith, lack of knowledge, and motive are ordinarily  
 27 immaterial.” *Id.* Similarly, you should not attempt to  
 28 delete or destroy any records or documents, whether  
 electronic or physical.

In summary, UC San Diego will be pleased to provide you  
 with assistance as you make your transition to your new  
 position. At the same time, UC San Diego hopes that you  
 will provide similar assistance to ensure the continued  
 smooth functioning of the ADCS at UC San Diego as we  
 prepare to search for a new director.

1           48. After receiving UCSD counsel Park's June 18<sup>th</sup> letter requesting  
 2 compliance with his legal obligations and cooperation in transition, Defendant Aisen  
 3 chose a diametrically opposite course. Without having returned from his travels, on  
 4 Sunday, July 21, 2015, Aisen sent an email stating, "Because of the tone and  
 5 implications of the letter I received on 6/18/15 from UCSD general counsel, as well  
 6 as threatening statements made by UCSD leadership, it is untenable for me to  
 7 remain at UCSD through my planned resignation date. I resign immediately,  
 8 effective today, 6/21/15."

9           49. On or about 12:04 a.m. on Sunday June 21, 2015, USC's Associate  
 10 Dean for Clinical Research, Thomas Buchanan, emailed Defendant Aisen regarding  
 11 UCSD's electronic data capture ("EDC") system. Although Buchanan had  
 12 exchanged many emails with Aisen during the negotiations over the "transition" of  
 13 the ADCS from UCSD to USC, Buchanan's email was written as if it were the first,  
 14 starting, "I got your email address from Helen Chui, who told me about the  
 15 electronic data capture system that is in use at the Alzheimer's Disease Cooperative  
 16 Study. . . ." Buchanan asked Defendant Aisen "to request the software for USC." A  
 17 true and correct copy of this email is attached to this FAC as Exhibit 5. USC's  
 18 Buchanan wrote: "I am writing to request the software for USC, where we would  
 19 like to use it for clinical trials conducted by our faculty members. Please let me  
 20 know what we need to do to obtain the software." Given that Aisen had accepted  
 21 employment at USC in May, 2015, both Buchanan and Aisen were aware that Aisen  
 22 was under a conflict of interest with respect to Buchanan's request for UCSD  
 23 software. Nevertheless, Aisen promptly forwarded Buchanan's message (at 4:19  
 24 a.m.) to Defendant Pizzola, stating "I am forwarding this request to you as senior  
 25 administrative officer at the ADCS. Please respond direct to Drs. Buchanan and  
 26 Chui." Given that Pizzola had also committed to leave UCSD for USC, both Aisen  
 27 and Pizzola were aware that they were both under a conflict of interest with respect  
 28 to the transfer of UCSD property to USC. Plaintiff alleges these facts in support of



1 its claims that Defendants breached their state law duties to UCSD, and proceeded  
2 with guilty knowledge.

3 50. After tendering his resignation, Defendant Aisen refused to consent to  
4 an exit interview with any of his former colleagues at UCSD, and made no  
5 arrangements for the transition of his responsibilities as Director of the ADCS,  
6 despite multiple requests from UCSD.

7 51. Defendant Aisen and other Individual Defendants arranged for the  
8 return of the laptop computers that had been issued to them and which were owned  
9 by The Regents. Almost all UCSD laptops used by Individual Defendants had been  
10 wiped of all data, notwithstanding The Regents' ownership of the data.

11 52. Worse, upon their departure, and through the present, Defendant Aisen  
12 and the Individual Defendants have exerted dominion and control over the ADCS  
13 Data that has been entrusted to UCSD as a participant in the ADCS, and have failed  
14 and refused to provide UCSD with account data, passwords, and access credentials  
15 to enable UCSD to maintain administrative control of ADCS Data, as set forth  
16 below.

17 **Defendants Take Control over ADCS Data after Resigning from The Regents**

18 53. One of the core functions that UCSD performs in connection with the  
19 ADCS is to receive, monitor, and analyze data from clinical trials and research  
20 studies that ADCS administers. Such clinical data include medical records of the  
21 individuals who have volunteered to participate in clinical trials of new drugs, and  
22 other information of a sensitive, confidential, and proprietary nature. Such data are  
23 typically transmitted to ADCS from the various sites at which clinical studies are  
24 conducted via an internet website with a unique URL and stored on computer  
25 servers. UCSD sometimes contracts with commercial vendors such as Amazon to  
26 host ADCS Data on their computer servers, colloquially referred to as "the Cloud."

27 54. Maintenance of data pertaining to clinical trials is subject to detailed  
28 regulations promulgated by the federal Food and Drug Administration (FDA).

1 Maintenance of study data is also subject to contractual obligations set forth in the  
 2 contracts between The Regents and the companies and government agencies that  
 3 sponsor clinical trials. Such contracts specify that all data created or captured by  
 4 UCSD related to the ADCS program will be jointly owned by The Regents and the  
 5 sponsors, and will be maintained by UCSD.

6 55. For example, The Regents entered written agreements with Eli Lilly  
 7 and Company (“Lilly”), and the Toyama Chemical Company (“Toyama”) with  
 8 respect to research studies that were ongoing at the time of Defendant Aisen’s  
 9 resignation, and remain ongoing today. A true and correct copy, without exhibits, of  
 10 The Regents’ agreement with Lilly is attached hereto as Exhibit 6 (the “Lilly  
 11 Agreement”). A true and correct copy, without exhibits, of The Regents’ agreement  
 12 with Toyama is attached hereto as Exhibit 7 (the “Toyama Agreement”).

13 56. None of the Defendants are parties to the Lilly Agreement or the  
 14 Toyama Agreement.

15 57. Pursuant to Section 18.1 of the Lilly Agreement, UCSD is required to  
 16 create and maintain all records required by the Agreement, and Section 16.1  
 17 provides that Study Data will be captured by UCSD and maintained jointly by Lilly  
 18 and UCSD. *See* Exhibit 6. Pursuant to Section 16.2, the study data are jointly  
 19 owned by Lilly and UCSD.

20 58. Pursuant to Section 8(C)(i) of the Toyama Agreement, Clinical Study  
 21 results shall be jointly owned by Toyama (and its parent company) and The Regents.  
 22 *See* Exhibit 7. Pursuant to Section 8(C)(iii), all joint intellectual property created as  
 23 a result of the clinical studies will belong jointly to Toyama (and its parent  
 24 company) and The Regents. *Id.*

25 59. The ADCS was also partially funded by an award from Department of  
 26 Health and Human Services, through the NIH. The terms of this funding are set  
 27 forth in the Notice of Award (“NOA”) issued by NIH on December 8, 2014. A true  
 28 and correct copy, without exhibits, of the NOA is attached hereto as Exhibit 8. (The

1 financial information on this copy was redacted by the University's Department of  
 2 Contracts and Grants in connection with making the NOA publicly available.)  
 3 Pursuant to the NOA, UCSD is expressly identified as the grant recipient, and  
 4 funding provided by the NIH is to be received by Defendant Aisen "on behalf of  
 5 [UCSD]." *See* Exhibit 8 at p. 1; *see also* p. 3 of December 12, 2014 letter from  
 6 Alzheimer's Association attached as part of Exhibit 8. Further, the NOA expressly  
 7 provides that a principal investigator such as Defendant Aisen may not transfer the  
 8 ADCS project to another host institution without first securing approval from the  
 9 NIH and a written release by UCSD approving the transfer. Exhibit 8 at  
 10 "Conditions of Award" at p. 9. Representatives of NIH have confirmed, following  
 11 Dr. Aisen's resignation, that "UCSD is the grant holder and retains custody of the  
 12 data."

13 60. In short, the contracts governing the ADCS make it abundantly clear  
 14 that the data generated by ADCS studies are to be maintained under the control of  
 15 UCSD for the benefit of the study sponsors and The Regents, who are the owners of  
 16 the data. There is no plausible interpretation of the governing contracts that would  
 17 accord Defendant Aisen or any of the Individual Defendants the right, privilege, or  
 18 power to assume control of ADCS Data after severing their employment from  
 19 UCSD, but this is exactly what Defendants have done.

20 61. While still employed by UCSD, Defendant Aisen and one or more of  
 21 the Individual Defendants, conspired to arrange for ADCS Data to be hosted on an  
 22 Amazon account in the name of a party other than UCSD, presumably one or more  
 23 of the Individual Defendants, or persons under their control. The account bears  
 24 Amazon Account No. 675713428646. According to UCSD accounting records,  
 25 Amazon had invoiced UCSD, and The Regents has paid, approximately \$96,000 for  
 26 the maintenance of this account.

27 62. After the resignations of Defendant Aisen and the other Individual  
 28 Defendants, representatives of UCSD made repeated requests that the Defendants

1 turn over to UCSD all account data, passwords, and access credentials for any and  
 2 all repositories holding ADCS Data, including Amazon Account No.  
 3 675713428646. The Defendants failed to respond in any meaningful way, and have  
 4 failed and refused to relinquish control of ADCS Data.

5 63. On Sunday, June 28, 2015, UCSD Dean and Associate Vice Chancellor  
 6 Gary S. Firestein, M.D., sent an urgent message to his counterpart at USC, Associate  
 7 Dean for Clinical Research Thomas Buchanan, stating, “Since Dr. Aisen is now an  
 8 employee and agent of USC, we formally request your assistance in directing Dr.  
 9 Aisen to turn over to UCSD all account data, passwords, and access credentials for  
 10 any and all repositories holding ADCS data, of whatever kind or nature.” Dr.  
 11 Firestein’s message was referred to USC Provost Michael Quick for response. Mr.  
 12 Quick responded on Monday, June 29, 2015, “I will assume that this issue of access  
 13 to data, etc., will get resolved today,” but took no steps to do so, and the Defendants  
 14 continue to assert dominion and control over ADCS Data.

15 64. While the EDC system was originally hosted solely on physical servers  
 16 at UCSD at The San Diego Supercomputer Center (SDSC), the system was placed  
 17 on the Amazon “cloud” under a UCSD account. Amazon invoices show that  
 18 Defendant Aisen changed the billing address for the Amazon cloud account (hosting  
 19 the ADCS Data) from UCSD to Defendant Aisen’s *home address*. Compare April  
 20 1, 2015-April 30, 2015 AWS invoice, *with* AWS invoice for the period of May 1,  
 21 2015, to May 31, 2015; attached to this FAC as Exhibit 9. UCSD also has  
 22 discovered that Defendants diverted and blocked UCSD’s access to at least one  
 23 other account in the “cloud,” on a source code hosting website called GitHub.  
 24 Recent discovery further reveals that Defendants Jimenez-Maggiore, and Hong,  
 25 were directed by, and acted together in a conspiracy with, Defendant Aisen to  
 26 accomplish this, and did this while all of them were employed by UCSD, and being  
 27 paid as employees of UCSD.  
 28

1           65. The Defendants' exercise of dominion and control over ADCS Data,  
 2 including Amazon Account No. 675713428646, has harmed The Regents and the  
 3 ADCS in the following ways:

- 4           a. Security patches and other maintenance operations such as  
 5 software upgrades cannot be conducted.
- 6           b. System monitoring is not possible, increasing the risk of hacker  
 7 attacks and data breaches.
- 8           c. Management of user accounts including the creation of new  
 9 accounts, updating permissions for existing accounts and  
 10 removal of deprecated accounts is not possible, leading to  
 11 potential security vulnerabilities.
- 12          d. Randomization codes may not be accessible, and safety  
 13 monitoring can be compromised.
- 14          e. Access to the backend database is not possible, thus restricting  
 15 reports to those that can be obtained through the existing web-  
 16 based system.
- 17          f. The code base cannot be inspected for potential security  
 18 vulnerabilities including potential backdoors into the system.
- 19          g. The type or amount of services procured from Amazon cannot be  
 20 controlled, leading to potential abuse of account billing.
- 21          h. All data are at risk for irreversible manipulation, duplication  
 22 and/or deletion and the creation of local snapshots for data  
 23 backup/history is not possible.

24           66. As a result of the conduct alleged herein, The Regents has suffered  
 25 damages, and will continue to incur damages, in an amount to be proved at trial.

**Defendants Committed Other Misconduct, Including Efforts to Conceal Evidence of Their Wrongdoing, and To Hamper UCSD's Efforts to Recover Valuable Information Necessary to Resume Operation of the ADCS**

67. Not only did Defendant Aisen and his other co-conspirators engage in the aforementioned bad acts, but they then took further actions to harm UCSD, and hamper UCSD's ability to take over the ADCS after their resignations *en masse*. Specifically, the other bad acts taken by Defendants include, but are not limited to:

- a. Defendant Jimenez-Maggiora purchased an external hard drive in or about the 2nd quarter of 2015 and copied the contents of his entire UCSD laptop onto it. Defendant Jimenez-Maggiora has admitted under oath that he failed to ask anyone's permission at UCSD before making a copy of the entire contents of his UCSD laptop, including UCSD email and passwords, before making a copy of the UCSD laptop onto his hard drive which he now has in his possession.
- b. Defendant Jimenez-Maggiora never told anyone at UCSD that he had taken and retained a snapshot of his UCSD computer.
- c. Defendant Jimenez-Maggiora originally testified under oath in this case that although USC bought him a laptop to use for the benefit of USC, he did not copy or transfer any information from the external hard drive (containing the entire image of his UCSD laptop) to his USC laptop. However, when Defendant Jimenez-Maggiora saw an email sent by him from his UCSD email address, and dated June 3, 2015 (weeks prior to his June 26, 2015, resignation from UCSD), sent by USC employee Rene Pak regarding Defendant USC establishing an enterprise agreement with AWS, Jimenez-Maggiora then admitted that he had actually had a copy of that email on his USC-provided laptop computer.



d. Before resigning from UCSD, Defendant Tobias copied UCSD data (The Regents does not currently know exactly what she copied as Defendant Tobias is in sole possession of such data) to USB Storage Devices. Specifically, forensic investigation has revealed a number of link files on the computer indicating the transfer of data from the computer to a USB storage device, such as a thumb drive or an external hard drive. UCSD is informed and believes and thereon alleges that Link files are similar to shortcuts in that they reference a file in another location. These link files have timestamps for themselves along with the file that they reference. A number of the link files indicated that files were copied from this computer to a Kingston DataTraveler 2.0 USB device, some of which were copied into a file folder titled “\USC\.” Several of the link files pointing to that thumb drive, including those in the USC file folder, reference the ADCS:

F:\USC\ADCS Support.V2.dct.xlsx

F:\USC\ADCS to USC PSNL.dct.xlsx

F:\USC-ADCS Press Release.docx

F:\USC\HR Meeting Schedule.xlsx

e. UCSD is informed and believes and thereon alleges that all of these files have a timestamp of May 22, 2015, well before she was to resign from UCSD in favor of USC.

f. Defendant Aisen was in possession of three computers and one smart phone, one of which is a laptop UCSD provided at its expense to enable Defendant Aisen to conduct UCSD business, but which Defendant Aisen to this date has refused to return (claiming it has personal information on it). Defendant Aisen also refuses to return the smart phone UCSD provided to him at

1 its expense for his use as a UCSD employee. Additionally,  
 2 UCSD is informed and believes and thereon alleges that  
 3 Defendant Aisen, either personally or through his co-  
 4 conspirators, deleted archived PST files, as well as files that  
 5 were once contained in a “DropBox” folder (as well as numerous  
 6 subdirectories).

7 g. Defendant Jimenez-Maggiora admitted that after downloading  
 8 the entirety of the UCSD laptop onto an external hard drive, he  
 9 then “wiped” the UCSD laptop. Further, prior to wiping his  
 10 UCSD computer, Defendant Jimenez-Maggiora did not seek  
 11 permission or authorization from UCSD to remove all such data  
 12 (belonging to UCSD) by wiping that computer.

13 h. Defendant Hong admitted that he reinstalled the operating  
 14 system on his UCSD-provided Macbook laptop the day after he  
 15 resigned from UCSD. UCSD is informed and believes and  
 16 thereon alleges that re-installation of an operating system on a  
 17 computer has the potential to overwrite data on the computer,  
 18 thereby permanently deleting it, and rendering the remainder of  
 19 the data inaccessible without the use of specialized recovery  
 20 tools. It is considered to be a primary “anti-forensic technique”  
 21 used to make it extremely difficult, if not impossible, to recover  
 22 the data (and evidence of wrongdoing) that may once have  
 23 resided on the machine. According to Defendant Hong, under  
 24 oath, all email, including his Gmail account, were wiped as part  
 25 of the reinstalling of the operating systems on the UCSD-  
 26 provided laptop. Further, Defendant Hong admitted that he  
 27 never told anybody at UCSD that he had wiped his Macbook or  
 28 that he had wiped his hard drive.

68. Currently, The Regents does not know what other bad acts the other defendants not named in preceding paragraphs did in terms of efforts to harm UCSD, as those defendants exclusively possess the evidence/data which UCSD is informed and believes and thereon alleges would demonstrate their further wrongdoing. UCSD reserves the right to amend these allegations after further discovery regarding the actions undertaken by Defendant Aisen, the Individual Defendants, and Defendant USC.

### **FIRST CLAIM FOR RELIEF**

#### **(BREACH OF FIDUCIARY DUTY - AGAINST DEFENDANT AISEN)**

69. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this FAC in support of this claim for relief.

70. By virtue of being entrusted to act as The Regents' agent in serving as Director of the ADCS, Defendant Aisen was a fiduciary to The Regents and owed fiduciary duties.

71. Defendant Aisen breached his fiduciary duties by committing the acts complained of herein, namely committing numerous bad acts against the best interests of UCSD and the ADCS, all in an effort to benefit himself and his new employer, Defendant USC, while still employed and being paid by UCSD.

72. As a direct and proximate result of Defendant Aisen's wrongful and tortious conduct, Defendant Aisen has been unjustly enriched at the expense of The Regents, and The Regents has suffered, and will continue to suffer, substantial damages including, but not limited to, the disruption and/or loss of contractual relations with ADCS sponsors and employees, costs incurred recovering data owned or controlled by The Regents, the loss of property owned by The Regents, and costs incurred with repairing and monitoring UCSD's network. Defendant Aisen's actions were a substantial factor in causing The Regents' harm.

73. This claim is not predicated on the theft of source code or other proprietary information or trade secrets owned by The Regents, or the infringement

1 of copyright in software source code that was developed and is owned by The  
2 Regents.

3 74. The above-recited actions of Defendant Aisen were done with malice,  
4 fraud, oppression, and reckless disregard of the above described rights of The  
5 Regents and within the meaning of California Civil Code § 3294. Therefore, The  
6 Regents is entitled to recover punitive damages against Defendant Aisen.

### 7 **SECOND CLAIM FOR RELIEF**

#### 8 **(BREACH OF DUTY OF LOYALTY - AGAINST INDIVIDUAL** 9 **DEFENDANTS AND DOES 1-20)**

10 75. The Regents incorporates herein, by way of reference, all other  
11 paragraphs set forth in this FAC in support of this claim for relief.

12 76. By virtue of being employed by The Regents, each of the Individual  
13 Defendants owed a duty of loyalty to The Regents during the term of their  
14 employment.

15 77. The Individual Defendants breached their duties by committing  
16 numerous bad acts which were against the best interests of UCSD and the ADCS, all  
17 in an effort to benefit themselves, and their new employer, Defendant USC, and  
18 Defendant Aisen, while still employed and being paid by UCSD.

19 78. Defendants acted in violation of their common law duty of loyalty  
20 owed to The Regents and in violation of California Labor Code §§ 2861 and 2863.  
21 Labor Code § 2861 specifically states that “[a]n employee shall, on demand, render  
22 to his employer just accounts of all his transactions in the course of his service, as  
23 often as is reasonable, and shall, without demand, give prompt notice to his  
24 employer of everything which he receives for the account of the employer.” Labor  
25 Code § 2863 specifically states that “[a]n employee who has any business to transact  
26 on his own account, similar to that entrusted to him by his employer, shall always  
27 give the preference to the business of the employer.” While still employed by The  
28 Regents, the Individual Defendants violated Labor Code § 2863 and also transferred

1 their loyalty to Defendant USC by working directly against the interests of UCSD,  
 2 the ADCS and its mission, all for their own benefit and the benefit of their new  
 3 employer, Defendant USC, and its new employee, Defendant Aisen.

4 79. This claim is not predicated on the theft of source code or other  
 5 proprietary information or trade secrets owned by The Regents, or the infringement  
 6 of copyright in software source code that was developed and is owned by The  
 7 Regents.

8 80. As a direct and proximate result of Defendants' wrongful and tortious  
 9 conduct, the Individual Defendants have been unjustly enriched at the expense of  
 10 The Regents, and The Regents has suffered, and will continue to suffer, substantial  
 11 damages including, but not limited to, costs incurred recovering data owned or  
 12 controlled by The Regents, the loss of property owned by The Regents, and costs  
 13 incurred with repairing and monitoring UCSD's network. Defendants' actions were  
 14 a substantial factor in causing The Regents' harm.

15 81. The above-recited actions of the Individual Defendant were done with  
 16 malice, fraud, oppression, and reckless disregard of the above described rights of  
 17 The Regents and within the meaning of California Civil Code § 3294. Therefore,  
 18 The Regents is entitled to recover punitive damages against the Individual  
 19 Defendants.

### 20 **THIRD CLAIM FOR RELIEF**

#### 21 **(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AND DUTY** 22 **OF LOYALTY - AGAINST DEFENDANT USC, AND DOES 1-25)**

23 82. The Regents incorporates herein, by way of reference, all other  
 24 paragraphs set forth in this FAC in support of this claim for relief.

25 83. The acts described above (in support of The Regents' first and second  
 26 claims for relief) constitute a breach of fiduciary duty owed by Defendant Aisen and  
 27 breach of the duty of loyalty by the Individual Defendants. Defendant USC is  
 28 responsible for that harm in that Defendant USC aided and abetted Defendant Aisen

1 and the Individual Defendants in committing the breach of duty of loyalty and  
 2 fiduciary duty. Specifically, Defendant USC assisted Defendant Aisen and the  
 3 Individual Defendants in formulating a plan to take all of the ADCS employees and  
 4 move them to Defendant USC, *en masse*, using inside information wrongfully  
 5 obtained by, among others, Defendants Tobias and Pizzola (and certain other ADCS  
 6 employees, the identities of which are not yet known to The Regents). Defendant  
 7 USC did so knowing full well that Defendant Aisen, Tobias, Pizzola, and Jimenez-  
 8 Maggiora were still employed by UCSD and, therefore, owed duties (including a  
 9 duty of loyalty) to their then employer, UCSD. Despite its public protestations to  
 10 the contrary, Defendant USC held “closed door” meetings to scheme and plan with  
 11 Defendants Aisen, Tobias and Pizzola, and likely others, and did so in the very  
 12 conference rooms occupied by the ADCS in offices being paid for *by UCSD*, with  
 13 the intent to harm the Regents and the ADCS.

14 84. The information that USC received from Defendants Tobias and  
 15 Pizzola included data pertaining to each ADCS employees’ title, job duties, and  
 16 compensation. Defendant USC then wrongfully used that information belonging to  
 17 UCSD to offer almost all, if not all, of the ADCS employees a job with Defendant  
 18 USC, and, in many cases, offering ADCS a material “signing bonus” if they  
 19 resigned their employment with the ADCS abruptly and went to work immediately  
 20 for Defendant USC. Defendant USC then, in many cases, set the ADCS employees’  
 21 start dates at Defendant USC on or close to the day after the date of their USC offer  
 22 letter. This scheme was designed to assure Defendant USC that the ADCS  
 23 employees would resign their employment with UCSD and move immediately to  
 24 Defendant USC without an orderly transition of their job responsibilities. Many if  
 25 not all of the ADCS employees then did exactly what Defendants pressured them to  
 26 do, giving UCSD little if any advance notice of their resignation. The Regents is  
 27 informed and believe and thereon allege that Defendants Aisen, Tobias, Pizzola, and  
 28 USC then used the facts of the resignations by many of the ADCS employees



1 against UCSD, by arguing that without many of its employees, UCSD could no  
2 longer fulfill its duties under the various grants and contracts. Defendants engaged  
3 in a further effort to further intimidate UCSD and convince many of UCSD's third  
4 party study sponsors that they had no choice but to seek to move their studies with  
5 Defendant Aisen and his co-conspirators. The premise was false. Defendants Aisen  
6 and USC ignored that UCSD, as one of the top research institutions in the United  
7 States, had interim leadership in place to transition the duties abandoned by the  
8 former ADCS employees. The Regents also incorporated by reference the  
9 allegations in Paragraphs 94, below, as if fully set forth in this paragraph.

10 85. Defendant USC also aided and abetted the breaches of duties described  
11 above by assisting Defendants Jimenez-Maggiore and Hong, as well as Defendants  
12 Aisen and Pizzola, and the Individual Defendants (who worked as part of the ADCS  
13 Informatics Core) in determining the best method to transfer to USC the ADCS Data  
14 (which was stored within the EDC), and then either directly, or by turning a blind  
15 eye refusing UCSD's request to provide it with the needed passwords so that it  
16 could access its own system (the EDC) which was integral in enabling UCSD to  
17 carry out its duties under the various sponsor agreements.

18 86. Defendant USC also assisted Defendants Aisen, Pizzola, and Tobias, in  
19 working to formulate a plan to replicate, almost verbatim, many of the documents  
20 used to operate the ADCS. Defendants Gessert, Harless, and Shaffer also assisted  
21 Defendant USC in this effort. Further, Defendant USC accepted the benefits of  
22 further bad acts committed by the then UCSD ADCS employees, who, in breach of  
23 their respective duties, took study files, documents, and data, and also in one case  
24 took the paperclips and name tags UCSD had paid for as part of operating the  
25 ADCS.

26 87. This claim is not predicated on the theft of source code or other  
27 proprietary information or trade secrets owned by The Regents, or the infringement  
28

1 of copyright in software source code that was developed and is owned by The  
2 Regents.

3 88. The conduct of Defendant USC was a substantial factor in causing the  
4 harm suffered by The Regents as a result of the breaches described above. And, this  
5 unlawful conduct caused and will continue to cause a very significant amount of  
6 financial harm to The Regents.

7 89. The above-recited actions of Defendant USC were done with malice,  
8 fraud, oppression, and reckless disregard of the above described rights of The  
9 Regents and within the meaning of California Civil Code § 3294. Therefore, The  
10 Regents is entitled to recover punitive damages against Defendant USC.

#### 11 **FOURTH CLAIM FOR RELIEF**

#### 12 **(INTERFERENCE WITH CONTRACTUAL RELATIONS - AGAINST** 13 **DEFENDANTS AISEN PIZZOLA, TOBIAS, JIMENEZ-MAGGIORA,** 14 **HONG, GESSERT, SHAFFER, USC, AND DOES 1-25)**

15 90. The Regents incorporates herein, by way of reference, all other  
16 paragraphs set forth in this FAC in support of this claim for relief.

17 91. Valid contracts existed between The Regents and certain third parties.

18 92. Defendants knew of the existence of said contracts.

19 93. Defendants intended to disrupt the performance of the contracts  
20 between The Regents and certain third parties.

21 94. Defendants' conduct made it more expensive and difficult for The  
22 Regents to perform under its contracts with third parties, and, unless corrective  
23 action is taken by the court, The Regents will likely be unable to perform at all  
24 under its contracts.

25 95. By way of specific example, but not limitation, by refusing to turn over  
26 the passwords and other documentation necessary for UCSD to access the Cloud-  
27 based storage accounts, destroying data belonging to UCSD, stealing other  
28 documents related to the various studies, and preventing The Regents from  
exercising administrative control over the ADCS Data contained therein, and,

1 among other things, creating the impression that all ADCS employees would lose  
 2 their jobs unless they left to join the Individual Defendants at USC (and thereby  
 3 causing a multiple number of them to resign *en masse*), Defendants have made it  
 4 more difficult, if not impossible, for The Regents to comply with Sections 16.1 of  
 5 the Lilly Clinical Trial Agreement, which requires UCSD to capture and maintain  
 6 Study Data jointly with Lilly. Further, Defendants' actions have made it difficult, if  
 7 not impossible for The Regents to comply with Section 17.3 of the Lilly Clinical  
 8 Trial Agreement, which forbids either party from disclosing the confidential  
 9 information of the other. Further, as one more example, Defendant Gessert, while  
 10 employed by UCSD and receiving wages paid for by UCSD, worked at the direction  
 11 of Defendant Aisen in meeting with Lilly and worked against the interests of UCSD  
 12 in working to "transition" the Lilly A4 study away from UCSD and transition it to  
 13 USC, where she would soon be employed. As yet another example, Defendant  
 14 Shaffer assisted Defendant USC in preparing the necessary paperwork to have its  
 15 IRB approve of USC taking over the Lilly A4 study. Again, like the actions of the  
 16 other Individual Defendants, Shaffer did this while still employed by, and receiving  
 17 a salary from, UCSD. This claim is not about, nor is it predicated on, the theft of  
 18 source code or other proprietary information or trade secrets owned by The Regents,  
 19 or the "use" of software source code that was developed and is owned by The  
 20 Regents.

21 96. Defendants engaged in independently wrongful acts of conduct which  
 22 violated common and statutory law and which interfered with performance of the  
 23 contracts and made The Regents' performance more expensive and burdensome.  
 24 The full extent of Defendants' wrongful conduct will be shown at trial after the  
 25 opportunity for discovery.

26 97. The above-recited actions of Defendants Aisen, Pizzola, Tobias,  
 27 Jimenez-Maggiore, Hong, Gessert, Shaffer, and USC were done with malice, fraud,  
 28 oppression, and reckless disregard of the above described rights of The Regents and

1 within the meaning of California Civil Code § 3294. Therefore, The Regents is  
 2 entitled to recover punitive damages against Defendants Aisen, Pizzola, Tobias,  
 3 Jimenez-Maggiora, Hong, Gessert, Shaffer, and USC.

#### 4 **FIFTH CLAIM FOR RELIEF**

#### 5 **(INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC** 6 **ADVANTAGE – AGAINST DEFENDANTS AISEN, PIZZOLA, TOBIAS,** 7 **JIMENEZ-MAGGIORA, HONG, USC, GESSERT, SHAFFER AND DOES 1-** 8 **25)**

9 98. The Regents incorporates herein, by way of reference, all other  
 10 paragraphs set forth in this FAC in support of this claim for relief.

11 99. Economic relationships existed between The Regents and the sponsors  
 12 of the ADCS, including, but not limited to, Lilly, Toyama, and the NIA, containing  
 13 a past and probable future economic benefit or advantage to The Regents.

14 100. Defendants knew of these relationships.

15 101. Defendants intended to interfere with these relationships in order to  
 16 foster their own relationship with the ADCS sponsors, and the relationship between  
 17 the Individual Defendants and Defendant USC.

18 102. As described more fully above, Defendants engaged in tortious and  
 19 wrongful conduct, including the conversion of UCSD property, causing damage to  
 20 UCSD's network and systems.

21 103. This claim is not about, nor is it predicated on, the theft of source code  
 22 or other proprietary information or trade secrets owned by The Regents, or the "use"  
 23 of software source code that was developed and is owned by The Regents.

24 104. As a result of Defendants' tortious conduct, The Regent's relationship  
 25 with the ADCS program sponsors was disrupted and UCSD has been harmed in  
 26 ways that will be shown at trial. Defendants' conduct was a substantial factor in  
 27 causing The Regent's harm.

28 105. The above-recited actions of Defendants Aisen, Pizzola, Tobias,  
 Jimenez-Maggiora, Hong, Gessert, Shaffer, and USC were done with malice, fraud,

1 oppression, and reckless disregard of the above described rights of The Regents and  
 2 within the meaning of California Civil Code § 3294. Therefore, The Regents is  
 3 entitled to recover punitive damages against Defendants Aisen, Pizzola, Tobias,  
 4 Jimenez-Maggiora, Hong, Gessert, Shaffer, and USC.

### 5 **SIXTH CLAIM FOR RELIEF**

#### 6 **(COMMISSION OF COMPUTER CRIMES PURSUANT TO CALIFORNIA** 7 **PENAL CODE SECTION 502(C) AGAINST ALL DEFENDANTS)**

8 106. The Regents incorporates herein, by way of reference, all other  
 9 paragraphs set forth in this FAC in support of the above-referenced claim for relief.

10 107. Penal Code, Section 502 imposes liability on one who:

- 11 • Knowingly accesses and without permission alters, damages, deletes,  
 12 destroys, or otherwise uses any data, computer, computer system, or  
 13 computer network in order to either (A) devise or execute any scheme  
 14 or artifice to defraud, deceive, or extort, or (B) wrongfully control or  
 15 obtain money, property, or data;
- 16 • Knowingly accesses and without permission takes, copies, or makes  
 17 use of any data from a computer, computer system, or computer  
 18 network, or takes or copies any supporting documentation, whether  
 19 existing or residing internal or external to a computer, computer  
 20 system, or computer network;
- 21 • Knowingly and without permission uses or causes to be used computer  
 22 services;
- 23 • Knowingly accesses and without permission adds, alters, damages,  
 24 deletes, or destroys any data, computer software, or computer programs  
 25 which reside or exist internal or external to a computer, computer  
 26 system, or computer network;
- 27 • Knowingly and without permission provides or assists in providing a  
 28 means of accessing a computer, computer system, or computer network

1 in violation of this section;

- 2 • Knowingly and without permission accesses or causes to be accessed
- 3 any computer, computer system, or computer network; or
- 4 • Knowingly introduces any computer contaminant into any computer,
- 5 computer system, or computer network.

6 108. All Defendants violated Penal Code, Section 502, by doing the acts  
 7 described above, including, without limitation: (a) the knowing and unapproved of  
 8 disruption of the ability of UCSD to access its own computer systems and the ADCS  
 9 Data; (b) the movement of the ADCS Data to AWS and changing the ownership of  
 10 the account into the name of Defendant Aisen; (c), the refusal to return passwords  
 11 that were exclusively in the possession, custody and control of Defendants Aisen,  
 12 Jimenez-Maggiora and Hong; and (d), the deletion of data from the UCSD  
 13 computers and computer systems (in part to slow down UCSD's ability to continue  
 14 to perform the obligations it is required to perform under the governmental and  
 15 private contracts, and also to cover up their misdeeds.

16 109. As a direct and proximate result of Defendants' wrongful conduct,  
 17 Defendants have been unjustly enriched, and The Regents has been harmed and The  
 18 Regents has sustained damages in an amount to be proven at trial.

19 110. As recently confirmed in *United States v. Christensen*, No. 08-50531,  
 20 2015 WL 5010591, at \*14 (9th Cir. Aug. 25, 2015), contrary to the Defendants'  
 21 earlier contentions (in previously-filed motions), California Penal Code § 502(c)(2)  
 22 is not primarily an "anti-hacking statute." Section 502(c) applies even to an  
 23 employee who accesses a database or system with a valid password, but proceeds to  
 24 take, copy, or use data without permission to do so. Additionally, this claim is not  
 25 about, nor is it predicated on, the theft of source code or other proprietary  
 26 information or trade secrets owned by The Regents, or the "use" of software source  
 27 code that was developed and is owned by The Regents.

28



111. The Regents also has suffered irreparable harm as a result of Defendants' activities and will continue to suffer irreparable injury that cannot be adequately remedied at law unless Defendants, and their officers, agents and employees, and all other persons acting in concert with them, are enjoined from engaging in any further such acts.

## **SEVENTH CLAIM FOR RELIEF**

### **(CONVERSION- ALL DEFENDANTS)**

112. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this FAC in support of the above-referenced claim for relief.

113. This claim is not about, nor is it predicated on, the theft of source code or other proprietary information or trade secrets owned by The Regents, or the “use” of software source code that was developed and is owned by The Regents. Rather, The Regents contractually owned (or at least jointly owned with the sponsors) all data related to the ADCS project, as well as the data and contents of Amazon Account No. 675713428646, and the data contained on the UCSD laptop computers issued to the Individual Defendants, i.e., the ADCS Data. Additionally, the Individual Defendants are known to have taken physical property as well, including mobile phones, laptops as well as numerous regulatory documents, each of which belonged to UCSD.

114. The Defendants, and each of them, have wrongfully exercised dominion and control over the ADCS Data, and the other tangible documents referenced herein, and have intentionally and substantially interfered with The Regents’ ownership of the ADCS Data, as more fully described above. In other words, Defendants’ tortious conduct, on which this claim of conversion is based, consists of Defendant’s physical acts of taking of tangible and intangible property belonging to UCSD, including, but not limited to the ADCS Data, and electronic copies of documents owned by UCSD, as well as tangible property including

1 physical documents and supplies owned by UCSD, which individuals, like  
 2 Defendants Gessert, Harless, and Shaffer took prior to leaving UCSD.

3 115. As a direct and proximate result of the wrongful and tortious conduct  
 4 of Defendants as alleged herein, Defendants have been unjustly enriched and The  
 5 Regents has suffered, and will continue to suffer, substantial damages including, but  
 6 not limited to, costs incurred recovering data owned or controlled by The Regents,  
 7 the loss of property owned by The Regents, and costs incurred with repairing and  
 8 monitoring UCSD's network, and in other ways that will be shown at trial.  
 9 Defendants' actions were a substantial factor in causing The Regents' harm.

10 116. The above-recited actions of Defendants were done with malice, fraud,  
 11 oppression, and reckless disregard of the above described rights of The Regents and  
 12 within the meaning of California Civil Code § 3294. Therefore, The Regents is  
 13 entitled to recover punitive damages against Defendants.

#### 14 **EIGHTH CLAIM FOR RELIEF**

#### 15 **(VIOLATION OF GOV'T CODE § 87100 – AGAINST DEFENDANT AISEN)**

16 117. The Regents incorporates herein, by way of reference, all other  
 17 paragraphs set forth in this FAC in support of the above-referenced claim for relief.

18 118. By virtue of his appointment as the Director of the ADCS with the  
 19 University of California, Defendant Aisen is a public official subject to the  
 20 California Political Reform Act of 1974, California Gov't Code § 8100, *et seq.*

21 119. Defendant Aisen participated in making, and attempted to use his  
 22 official position to influence multiple government decisions. For example,  
 23 Defendant Aisen participated in making, and attempted to use his official position to  
 24 influence, the NIH's decision to provide continued funding to ADCS and to  
 25 potentially transfer NIH's grant from UCSD to USC. By way of specific example,  
 26 but not limitation, Defendant Aisen made requests to transfer federal funds to USC,  
 27 and contacted NIH representatives on May 21, 2015 regarding his attempt to  
 28 "complete the transition to a USC affiliation." Defendant Aisen also wrote in his

1 capacity “as senior administrative officer at the ADCS” to have UCSD license its  
 2 electronic data system to USC. *See* Exhibit 5 (the June 21, 2015 email from  
 3 Defendant USC’s Buchanan which was forwarded by Defendant Aisen prior to his  
 4 abrupt resignation to his co-conspirator Defendant Pizzola, who, at the time, was  
 5 still employed and being paid by UCSD).

6 120. It was reasonably foreseeable that the government decisions detailed in  
 7 Paragraph 119 would have a material financial effect on Defendant Aisen’s  
 8 interests. Defendant Aisen stood to personally benefit by receiving, among other  
 9 things, a \$500,000 salary and assistance with financing on a new home.

10 121. The financial effect of the governmental decisions detailed in  
 11 Paragraph 119 was distinct from its effect on the public generally.

12 122. As a public official with a conflict of interest, Defendant Aisen violated  
 13 California Gov’t Code § 87100 by participating in and attempting to influence the  
 14 NIH’s continued funding and potential grant transfer as well as UCSD’s potentially  
 15 licensing its electronic data capture system to USC.

16 123. Pursuant to Gov’t Code § 91003(b), The Regents seeks to preliminarily  
 17 restrain the execution of any official action in relation to which the violations set  
 18 forth above occurred, pending final adjudication. Ultimately, when it is finally  
 19 determined that a violation of Section 87100 has occurred, The Regents seeks an  
 20 order from the Court that the official action be set aside as void.

### 21 **NINTH CLAIM FOR RELIEF**

#### 22 **(VIOLATION OF GOV’T CODE § 87407 – AGAINST DEFENDANT AISEN)**

23 124. The Regents incorporates herein, by way of reference, all other  
 24 paragraphs set forth in this FAC in support of the above-referenced claim for relief.

25 125. By virtue of his appointment as Director of the ADCS with the  
 26 University of California, Defendant Aisen is a public official subject to the  
 27 California Political Reform Act of 1974, California Gov’t Code § 8100, *et seq.*  
 28

126. Defendant Aisen participated in making, and attempted to use his official position to influence, multiple government decisions. For example, Defendant Aisen participated in making, and attempted to use his official position to influence, the NIH's decision to provide continued funding to ADCS and to potentially transfer NIH's grant from UCSD to USC. By way of specific example, but not limitation, Defendant Aisen made requests to transfer federal funds to USC, and he contacted NIH representatives on May 21, 2015 regarding his attempt to "complete the transition to a USC affiliation." *See* Exhibit 3 at p. 4. Defendant Aisen also wrote in his capacity "as senior administrative officer at the ADCS" to have UCSD license its electronic data system to USC. *See* Exhibit 5.

127. While Defendant Aisen was participating in and attempting to influence the governmental decisions details in Paragraph 126, USC was Defendant Aisen's prospective employer. Defendants Aisen and USC were in negotiations and developing the parameters of Defendant Aisen's forthcoming employment.

128. The governmental decisions described in Paragraph 126 were directly related to USC, because USC stood to benefit from both the NIH potentially transferring its grants as well as UCSD's potentially licensing its electronic data capture system to USC.

129. Pursuant to California Gov't Code § 91003(b), The Regents seeks to preliminarily restrain the execution of any official action in relation to which the violations set forth above occurred, pending final adjudication. Ultimately, when it is finally determined that a violation of Section 87407 has occurred, The Regents seeks an order from the Court that the official action be set aside as void.

**TENTH CLAIM FOR RELIEF – ADDENDUM TO ALL CAUSES OF ACTION**

**(CIVIL CONSPIRACY – ALL DEFENDANTS)**

130. The Regents incorporates herein, by way of reference, all other paragraphs set forth in this FAC in support of the above-referenced claim for relief.

131. Defendants, and each of them, were aware that Defendant Aisen and Defendant USC planned to interfere with The Regents' contractual and economic relations with the NIA, with ADCS sponsors, and with UCSD employees, and that they planned for Dr. Aisen to act as a double-agent by advancing his personal interests and those of USC while he was still employed by The Regents.

132. Defendants, and each of them, with full knowledge and intent and without justification, agreed to act in concert with Defendants Aisen and USC to commit the tortious acts against The Regents described in this FAC in order to further their personal financial gain and to aid in the formation of their new venture, and to harm The Regents and UCSD.

133. As a result of the wrongful and tortious conduct of Defendants as alleged herein, Defendants have been unjustly enriched and The Regents has suffered, and will continue to suffer, damages in ways and amounts that will be shown at trial.

WHEREFORE, The Regents prays for Judgment against Defendants and each of them as follows:

1. For compensatory damages, according to proof;
2. For preliminary and permanent injunctive relief;
3. For restitution and/or disgorgement of profits;
4. For punitive damages;
5. For attorneys' fees;
6. For costs of suit incurred herein;
7. For a trial by jury; and

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1           8.     For such other and further relief as the Court may deem proper.

2     Dated: September 8, 2015

CROWELL & MORING LLP

3  
4                     s/ Mark A. Romeo

5                     Mark A. Romeo (CA Bar No. 173007)

6                     Attorneys for Plaintiff and Counterclaim-  
7                     Defendant

8                     THE REGENTS OF THE UNIVERSITY OF  
9                     CALIFORNIA

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